IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 349 of 2006 (M/B)

Sri Sandeep Agarwal s/o Sri Sudama Lal Agrawal
Hans Bhawan, Ramnagar Road, Kashipur,
District Udham Singh Nagar ……. Petitioner

Versus

1. Central Bank of India,
   Branch-Kashipur,
   District Udham Singh Nagar
   Through its Senior Branch Manager
2. Assistant General Manager,
   Central Bank of India,
   Regional Office, Dehradun,
   District Dehradun
3. M/s Hans Seeds (P) Ltd.,
   through its Managing Director
   Sri Sudama Lal Agrawal
   S/o Late Sri Madhoram,
   R/o Hans Bhawan, Ramnagar road,
   Kashipur, District Udham Singh Nagar …….Respondents

Mr. M. C. Bansal, Advocate for the petitioner.
Mr. B.D.Kandpal for respondent no. 1 and 2.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. M. C. Bansal, Advocate for the petitioner.

Mr. B.D.Kandpal for respondent no. 1 and 2.

2. The petitioner has filed this writ petition for the following reliefs:

"I. To issue a writ, order or direction in the nature of certiorari by quashing the notice dated 25.11.2005 Annexure No. 1 to this writ petition issued by the respondent no. 1 and 2 to the petitioner under Sub-Section (2) of the Section 13 of the Securitisation Act of 2002.

II. To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 and 2 not to take any measure as mentioned in clause (a) to (d) of Sub-section (4) of Section 13 of the Securitisation Act 2002 against the petitioner.

III. To issue any writ, order or direction or grant such other further relief in favour of the petitioner which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

IV. Award the cost of the petition to the petitioner."

2. The learned counsel for the petitioner submitted that no action could have been initiated against the petitioner under the provisions of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 as he was only a "guarantor" and not a "borrower".

3. The definition of "borrower" contained in clause (f) of Section 2 of the Act, reads as follows:

> "(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistances."

4. As the definition of "borrower" includes "guarantor" also, we do not find any force in the above submission of the learned counsel for the petitioner.

5. In view of the dictum of the Apex Court in the case of Mardia Chemicals Ltd. and others Vs. Union of India and others reported in (2004) 4 SCC 311, the petitioner has alternative efficacious remedy of approaching the Debt Recovery Tribunal U/s 17 of the Act.

6. In this view of the matter, we decline to entertain the petition filed by the petitioner under Article 226 of the Constitution of India.

7. The writ Petition, therefore, fails and is hereby dismissed.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**
28.03.2006 28.03.2006

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